No. 10-664

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT of the UNITED STATES

JOSEPHINE JOYCE, Petitioner

V.

J.C. PENNEY CORP. INC. Respondent

ON PETITION FOR REHEARING FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT

Josephine Joyce, Petitioner Pro Se
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QUESTIONS PRESENTED

Whether a decision produced by fraud (Fraud Upon the Court) violates the federal and US Constitution of legal due process by law?

Whether a decision by the lower courts was produced by Fraud (upon the court) would abridge petitioner's privileges, and violate statutory provisions of equal protection under the law as written in the U.S. Constitution Amend. XIV?

Whether a decision produced by fraud would render all or some of the lower courts decisions null and void having no effect?

For appellate purposes, mixed questions of law and facts are admitted or established, the rule of law is undisputed. The question is whether the facts satisfy the statutory standard?

Whether it is unconstitutional to dismiss a lawsuit or other legal action in which a serious factual pattern or allegations has been made would itself be violative of procedural due process as it would deprive a pro se litigant of their equal protection of the law visa vis a party who is represented by counsel?

Whether it is an abuse of the courts' discretion and unconstitutional for the acceptance of material facts that are alleged to be in violation of federal laws not to check on a review, so as not to cause serious errors in its judgment?

Whether false sworn and unsworn statements of law (8 USC § 1746 and 18 USC § 1001) given by the respondent's attorneys and any persons' coerced by them would deprive the petitioner of both US and Federal constitutional provisions of due process and rights to a fair trial?

Whether falsity of evidence, omission of facts, and false subpoenas, interfering with the quality justice would be grounds for a disciplinary hearing of an attorney?

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PETITION FOR EHEARING

Josephine Joyce, appearing Pro Se, respectfully petitions this Court for a rehearing of its January 24, 2010 decision. Petitioner presents claims of FRAUD UPON THE COURT by the Respondent's attorneys. Specifically, Petitioner request for an order (1) granting a rehearing, (2) vacate denial of writ. cert., (3) grant of writ, (4) reverse judgment due to law violations, or remand for more than a cursory review (5) substantial grounds. Deceit and Fraud.

GROUNDS FOR REHEARING

The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 Sup.Ct. 1401 (1958). U.S. Constitution Amend. XVI Equal protection under the law not performed for the Petitioner. Right of due process by law not given to Petitioner. Issues of deceptive practices not resolved.

As stated in "Naeem v. McKesson Drug Co., Case No. 04-3816 (April 12, 2006),When a district court fails to consider an essential Daubert factor, such as reliability and or relevancy, ***it has abused its discretion.***"

Although this Court almost never grants petitions for rehearing, this case meets the rare exception contemplated by Sup. Ct. R. 44.1 and articulated in Ambler v. Whipple, 90 US 278 Sup. Ct. 1874 *"If the omissions...on which the case was judged are material*

to the decision of the case, it presents a strong appeal for re hearing." This Court did not provide a reason for its denial. Petitioner is left with the task of figuring out the mind of the Court and the reason(s) for its denial.

The Physicians' transcripts are material to this case showing violation of laws, intent to prejudice evidence with misrepresentation of material facts, and a reckless disregard of laws.

Every trial in every jurisdiction affects other cases throughout our country. Every trial sets precedence. If a foul action is accepted in court by a judge in another state that foul action is now a legal argument in every single state in America. Conflicts on interpretation of laws exist within the circuits. Federal laws should apply to all persons. The state laws of Illinois should apply to all citizens of Illinois, but they don't.

Federal Rules of Evidence have been revised and adopted as of January 1, 2011. This is pertinent to the Petitioner's case. The old (not codified) FRE 702 and the revised (codified) FRE 702 has no requirements for any phrases to be recited. The 7th Circuit Court of Appeals thinks it is required sometimes.

PRELIMINARY STATEMENT

There is a presumption in favor of legality and of intent to comply with the law. The petitioner has been deprived of constitutional guarantees; (1) the right of due process by law, (2) equal protection under the law, (3) fair and just trial. This courts intervention is necessary to preserve the Petitioner's rights to a meaningful judicial review by law.

Jan. 5, 2011; unexpected shootings outside an AZ. shopping mall resulting in; among the dead a Federal Judge, and among the injured a Congress woman shot in the head. Petitioner's unexpected accident occurred at a shopping mall within Illinois leaving her injured with incurable diseases and a RIGHT TO PETIEION the court.

In Vicari v. Spiegel, 2007 Pa. Super LEXIS 3534 (October 18, 2007), the Superior Court held that an expert's opinion will not be deemed deficient merely because the witness failed to expressly use the specific words, "reasonable degree of medical certainty." The Superior Court reversed the lower court, holding that an expert need not use the specific words, "reasonable degree of medical certainty" when rendering expert medical testimony (936 A. 2d 503 Pa. Superior Court).

ILLINOIS RULES OF EVIDENCE

Committee Commentary

On January 1, 2011, by order of the Illinois Supreme Court, the Illinois Rules of Evidence will govern proceedings in the courts of Illinois except as otherwise provided in Rule 1101. On November 24, 2008, the Illinois Supreme Court created the Special Supreme Court Committee on Illinois Evidence (Committee) and charged it with codifying the law of evidence in the state of Illinois.

The Committee believes that the codification and promulgation of the Illinois Rules of Evidence will serve to improve the trial process itself as well as the quality of justice in Illinois. Based upon the charge and mandate to the Committee, and consistent with the above considerations, the Committee drafted the Illinois Rules of Evidence in accordance with the following principles:

(1) **Codification:** With the exception of the two areas discussed below under "Recommendations," the Committee incorporated into the Illinois Rules of Evidence the current law of evidence in Illinois whenever the Illinois Supreme Court or the Illinois Appellate Court had clearly spoken on a principle of evidentiary law within the last 50 or so years. Thus, Rule 702 retains the *Frye* standard for expert opinion evidence pursuant to the holding in *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 767 N.E.2d 314 (2002). Adopted September 27, 2010, eff. January 1, 2011.

Rule 702
TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs.

The old (not codified) FRE 702 or the revised (codified) FRE 702 has no requirements for any phrases to be recited).

Rule 704.
OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

ARUGMENT OF ISSUES SUPPORTED BY U.S. CONSTITUTION AND FEDERAL LAWS.

(1) Violations of federal laws exist (2) Conflict of laws exist within the circuits exist (3) bad faith practices, (fraud) exists. False unsworn statements 18 USC § 1746. Making false statements.; 18 USC § 1001 exist. (4) Abuse of courts discretion exist.

The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." Kenner v. C.I.R., 387 F. 3d 689 (1968). The maxim that fraud vitiates every transaction into which it enters applying to judgments as well as to contracts and other transactions. Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929).

People v. Sterling, 357 Ill. 354; 192 N.E. 229 (1934) Village of Willowbrook, 37 Ill.App.2d 393 (1962) Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935). "It is axiomatic that fraud vitiates everything." Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896).

Under Illinois and Federal law, when any officer of the court has committed "FRAUD UPON THE COURT" the orders and judgment of that court are: VOID OF NO LEGAL FORCE OR EFFECT.

HARMFUL ERRORS MADE IN LAW

Cases of wrongful convictions are not merely local concerns, they are national concerns.

Fraud in litigation, when not stopped permits injustices to any kind of case.

Persons exonerated listed below due to a miscarriage of justice. Local and national media news reports. (several of hundreds listed below).

(1). Barney Brown, 38 years in prison, Florida

(2). Michael Tillman, 23 years in prison, Illinois

(3). Rolando Cruz, (4). Alejandro Hernandez, 12 years in prison, Illinois

(5). Larry Mayes, 19 years in prison, Indiana

(6). David L. Scott, 23 years in prison, Indiana

(7). Wrong Steven Avery 18 yrs. in prison, WI.

(8). Robert L. Stinson 23 years in prison, WI.

DISBARRED- SUSPENDED ATTORNEYS
(below are several of thousands).

Years 2010 and 2011.

U.S. SUPREME COURT

D-2491 M.A. Shomber, D-2490 R.C. Arledge, D-2485 R.E. Mittendorff

ILLINOIS (IARDC)

Mr. 21375 H.J. Tatar, MR-24075 F.R. Redell

MR. 24186 F.P. Davis

Violating federal/state laws resulting in misrepresentations of material facts are serious matters demonstrating reckless conduct.

The Respondent's attorneys intended for the Petitioner and court to rely upon their misrepresentations (**fraud in fact**), causing erroneous court rulings/judgments. The Petitioner suffered injury or damage as a result. 97 ALR3d liability of attorney for abuse of process p. 690-691, 693.

Cases that **clearly specify** that the cause of action is **founded on abuse of process**. See 87 ALR3d,554, 580. Walker v Kyser (1967) 115 Ga. App. 314, 154 SE2d 457 (by implication).

Little v Sowers (1949) 167 Kan 72, 204 P2d 605.

Hoppe v Klapperich (1937) 224 Minn 224, 28 NW2d 780, 173.

Ash v Cohen (1937) 119 NLJ 54, 194 A 174.

In Neusus v. Sponholtz, 369 F2d, 259 (7th Cir. 1966), Reese Hubbard engaged in prejudicial cross-examination. The court called attention to the misconduct, 369 F.2d at 260-261, fn. 2:

Hubbard's unprofessional conduct has been criticized by the Illinois Supreme and Appellate Courts in opinions after our criticism in Quality Molding. In Ryan v. Monson, 33 Ill.App.2d 406, 179 N.E.2d 449 (1st Dist. 1961), the court reversed a judgment for the defendant because Hubbard's various acts of misconduct formed a pattern which permeated the trial and tainted the judgment Id. at 412-413, 415-417, 424 and 427, 179 N.E.2d 449.

Also ordered that the case be remanded for a hearing on a motion to assess expenses and attorney's fees due to the misconduct. Id. at 427-428, 179 N.E.2d 449. In Cline v. Kirchwehm Bros. Cartage Co., Inc., 42 Ill.App.2d 85, 191 N.E.2d 410 (1963) a new trial on the issue of damages was ordered because of Hubbard's misconduct including, improper cross examination.

The Court further finds under 28 U.S.C. 1927 that because the additional proceedings caused this matter is remanded to the trial judge for assessment of costs against Reese Hubbard for the expenses of printing plaintiff-appellee's brief and the additional

appendix in No. 15976. Attorney's fees of cases Nos. 15933, 15976 and 16210. Ordered that the district court give and enter judgment in favor of plaintiff, Donna M. Kiefel.

A judge is not the court. People v. Zajic, 88 Ill. App. 3d 477, 410 N.E. 2d 626 (1980). Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". Bulloch v. United States, 763 F. 2d 1115, 1121 (10th Cir. 1985).

Fraud upon the court has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

Petitioner has a legal right to remedy, and Justice.

Rules of Professional Conduct

Rule 83.55.1. Responsibilities of a Partner or Supervisory Lawyer

(a) Each Partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of all lawyers in the firm conforms to these rules.

(c) A lawyer shall be responsible for another lawyer's violation of these rules, if

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved;

LR83.53.3. Conduct Before a Tribunal

(a) In appearing in a professional capacity before a tribunal, a lawyer shall not:
(1) make a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false;

LR83.58.4. Misconduct

(a) A lawyer shall not:
(1) violate or attempt to violate these rules;
(4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(5) engage in conduct that is prejudicial to the administration of justice;

The Duke Lacrosse case was a disaster. The case, involved false rape charges against three Duke University lacrosse players, began with gang rape allegations in March 2006 and ended with the declaration of their innocence in April 2007 and the disbarment of Durham County District Attorney Mike Nifong in June of that year. Office of Disciplinary Counsel v. Raiford, 687 A.2d 1118 (Pa. 1997).

On January 17, 1997, Raiford's disbarment resulted from his convictions on obstructing the administration of law or other governmental function, unsworn falsification to authorities, and tampering with public records and information.

SEARS v. UPTON, No. 09-8858 Cert. granted, judgment vacated, and remanded June 29, 2010.

The U.S. Supreme Court returned a case to the Georgia Supreme Court to reconsider whether the failures of the defendant's *lawyer probably affected the sentence he received.*

JEFFERSON v. UPTON, No. 09-8852 Cert. granted and decided May 24, 2010

The U.S. Supreme Court reversed a decision by the U.S. Court of Appeals for the Eleventh Circuit, thereby giving the defendant another chance to show that his *trial counsel was constitutionally ineffective.*

MELSON V. ALLEN, No. 09-5373

The petition for rehearing is granted. The order entered October 5, 2009, denying the petition for a writ of certiorari is vacated. The motion of petitioner for leave to proceed in forma pauperis and the petition for

a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of Holland v. Florida, 560 U.S.___ (2010)." (June 21, 2010)

As incident to the judicial power, courts of the United States possess inherent authority to supervise the conduct of their officers, parties, witnesses, counsel, and jurors by self- preserving rules for the protection of the rights of litigants and the orderly administration of justice.

To be probative on the issue of causation, a medical expert is not required to give an opinion regarding a specific cause. Rather, a medical expert is permitted to testify to what might or could have caused an injury, despite any objection that the testimony is inconclusive. For evidence to be relevant, it need only tend to make the existence of any fact more probable or less probable than it would otherwise be. Hawn v. Fritcher, 301 Ill. App. 3d 248, 254, 703 N.E.2d 109, 113 (1998).

CONCLUSION

Petitioner respectfully request the Honorable Justices of the U. S. Supreme Court to aid in stopping fraudulently practices by self serving attorneys that do not think they must follow the laws/rules.

Petitioner further request this court to vacate its denial on Jan. 24, 2011 and grant a writ of certiorari, and or reverse lower courts' decisions and remand this case back to the lower court for trial on all claims set forth in Petitioner's complaint, and however else this court thinks is just.

Respectfully Submitted,

Josephine Joyce, Petitioner, Pro Se

CERTIFICATE of COMPLICE

Petitioner hereby certifies that she is in compliance with the U.S. Supreme Court.

Rule 44. Rehearing 1. 2. And,

PRESENTS REQUEST in GOOD FAITH

NOT FOR DELAY

Respectfully Submitted by the undersigned,

Josephine Joyce, Petitioner, Pro Se
on the Date of February 15, 2011

CERTIFICATE OF COMPLIANCE

Petitioner hereby certifies that she is in compliance with the U.S. Supreme Court

Rule 33. Document Preparation

1. (a)(b)(c)(d)(e)(f)(g)(h).

Document prepared using a typeset in the Century family with a 12 point type. The type face for footnotes are 10 point type. The word count including footnotes are 2,614 words. Word count via Microsoft Office 2007.

Submitted by the undersigned,

Josephine Joyce, Petitioner, Pro Se

on the date of February 15, 2011